

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Commission

**REPLY COMMENTS OF SINCLAIR BROADCAST GROUP, INC.  
ON NOTICE OF PROPOSED RULE MAKING**

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## Summary

Sinclair Broadcast Group, Inc. (“Sinclair”) submits that the comments that have been filed in this proceeding clearly establish that the marketplace is extraordinarily well served by a multiplicity of voices attributable to the dramatic increase over the past decade in video, audio, newspaper, cable, and satellite outlets as well as to the phenomenal spread of Internet usage. The current local television ownership rule, which limits the ability of one owner to own or program a second station in a market, disserves the public interest and lacks any justification.

Sinclair does not intend to rehash arguments that have already been made and is filing these reply comments solely to address several issues raised by various commenters with respect to the local television ownership rule. Specifically, these reply comments address the NAB’s “10/10” proposal, Belo Corp.’s support of the Top 4 rule, the mischaracterization of Sinclair’s NewsCentral initiative by some commenters, and the failure of any comments to demonstrate harm resulting from television duopolies whereas the benefits of duopolies have been well documented.

The NAB’s comments provide extensive evidence to support the repeal of the local television ownership rule, yet the NAB has proposed a continuation of the rules as modified by the NAB’s “10/10” proposal. Although Sinclair continues to favor the complete elimination of the rule, in the absence of elimination, the NAB’s “10/10” proposal has a certain amount of merit so long as it is applied as a “safe-harbor” permitting certain combinations, but not as a presumption against others. The comments of Belo Corp. amply demonstrate that the Commission’s current rule should be repealed in its entirety, yet, without any justification, support retention of the top four component of the current rule.

Sinclair's NewsCentral initiative consists of a centralized news operation to provide national and international news as well as sports news of national interest. Contrary to the allegations of some commenters, the NewsCentral initiative will not adversely impact local news operations; in fact, Sinclair plans to increase the quantity and quality of local news through implementation of the NewsCentral model.

Finally, given the existence of many duopolies and LMAs, it is significant that no party submitting comments has presented any evidence of actual harm resulting from these arrangements. In contrast to the total lack of evidence showing harm, numerous parties have demonstrated the myriad benefits resulting from duopolies and LMAs. As the comments have shown, duopolies and LMAs have prevented the demise of numerous failing stations and have brought diverse programming to the marketplace.

In sum, the factual record in this rule making clearly reflects that the local television ownership rule is irrational and actually harms the public interest. Accordingly, for the reasons discussed herein and in its earlier comments, Sinclair respectfully requests that the Commission repeal its local television ownership rule.

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Sinclair Broadcast Group, Inc. (“Sinclair”), by its attorneys, hereby submits its reply comments in response to the Notice of Proposed Rule Making, FCC 02-249, in the above-captioned proceeding, released September 23, 2002 (the “NPRM”).

**I. INTRODUCTION**

Sinclair submitted extensive comments in this proceeding addressing the Commission’s local television ownership rule (also referred to as the “duopoly rule”) which were accompanied by supporting studies, including a study by Dr. Robert W. Crandall, a noted telecommunications economist. Numerous other entities also filed comments which discussed the flaws in the local television ownership rule. The Commission released a number of studies which support the elimination of the duopoly rule. Based on its own comments and those filed by other parties, as well as on the Commission’s own studies, Sinclair believes the current record presents a

compelling case for the elimination of the current rules which prohibit joint ownership of certain television stations. The record amply demonstrates that a sufficient number of “voices” exists in today’s society to eliminate any concerns relating to viewpoint diversity and that the Justice Department is the appropriate governmental agency for addressing economic/competition issues.

Notwithstanding the already voluminous existing record that supports elimination of the local television ownership rule, Sinclair is submitting these brief reply comments focusing on four particular areas. First, Sinclair offers its views on the “10/10” proposal submitted by the National Association of Broadcasters (“NAB”). Second, Sinclair responds to Belo Corp.’s suggestion that the Commission retain the Top 4 rule. Third, Sinclair wishes to set the record straight with regard to its “NewsCentral” operations which are discussed in several of the comments that were filed. Finally, it is noteworthy that there is no evidence of any harm resulting from the numerous duopolies and local marketing agreement arrangements that have existed for more than a decade and the record contains ample evidence of the benefits of these arrangements.

## **II. THE NAB’S “10/10” PROPOSAL**

The NAB presented extensive evidence that supports the elimination of the Commission’s current duopoly rule.<sup>1</sup> The NAB’s comments demonstrated the enormous proliferation of media outlets that provide competition and diversity; the lack of empirical evidence showing a link between diversity of ownership and viewpoint diversity; the numerous inherent problems with “voice” tests; and the financial pressures facing small and medium

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<sup>1</sup> Comments of the National Association of Broadcasters (“NAB Comments”).

market broadcast television stations.<sup>2</sup> Notwithstanding this evidence, the NAB stopped short of advocating the elimination of the rule, proposing instead a modification of the rule to permit television duopolies any time both stations which are to be jointly owned in the same market have a year-long (four Nielsen books) average, all day viewing share of total viewers<sup>3</sup> (including cable) of less than 10 or when a station with a share greater than 10 is to be co-owned with a station with a share less than 10 (referred to as the “10/10” proposal).<sup>4</sup>

While Sinclair believes that the comments filed by the NAB, Sinclair, and many others provide extensive evidence justifying a complete elimination of the current duopoly restrictions, in the absence of such elimination, the NAB proposal may have a certain amount of merit, which the Commission could justify. Sinclair wishes to emphasize, however, that the “10/10” proposal, if accepted, should serve solely as a “safe-harbor,” and not as a benchmark by which a presumption of permissible versus impermissible duopolies is established. In other words, duopolies which meet the parameters of the “10/10” proposal should be per se legal; however, the failure of a proposed combination of television stations to satisfy the parameters should not create a presumption of impermissibility necessitating a waiver.<sup>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Sinclair is not taking a position in these reply comments as to whether the methodology suggested by the NAB for determining a station’s share is appropriate and reserves judgment pending further analysis as to whether an alternative method would provide a more accurate indication of a television station’s share of audience.

<sup>4</sup> *Id.* at 79.

<sup>5</sup> Although the NAB proposal seems to be consistent with the “safe-harbor” position advocated by Sinclair herein, Sinclair disagrees with the characterization of combinations not meeting the “10/10” safe-harbor as requiring a “waiver” of the standard. In addition, Sinclair believes that in addition to the various factors advocated by the NAB for evaluating transactions

The failure to meet a “10/10” safe-harbor cannot create a presumption against allowing a proposed station combination because no evidence exists indicating that television combinations which do not meet the proposal would cause any harm. Were the “10/10” proposal to be viewed as establishing a presumption, rather than merely creating a safe-harbor, the question would have to be asked, why ten percent? Why not fifteen? Why not twenty? Why not a maximum combined percentage?<sup>6</sup> Since the answer to these questions and many others does not appear anywhere in the record, a failure to meet the “10/10” proposal cannot be treated as creating a presumption that a proposed combination is impermissible.

Treating the “10/10” proposal solely as a safe-harbor would meet the NAB’s admirable goals of allowing duopolies in small and medium markets and providing clear and unambiguous guidance for many proposed transactions. At the same time, by not creating a negative presumption for combinations which fail to meet the test, the NAB’s proposal would not run afoul of the recent decisions of the United States Court of Appeals for the District of Columbia Circuit in the *Sinclair* and *Fox* cases, which demonstrate that unsupported regulatory fiat cannot withstand judicial scrutiny. *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002), *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) and *Sinclair Broadcast Group, Inc. v.*

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that do not meet the safe-harbor, the competitive ownership landscape of the particular market should be taken into account.

<sup>6</sup> In fact, while LIN Television Corporation, Raycom Media, Inc., Waterman Broadcasting Corporation and Montclair Communications, Inc. filing as the “Coalition Broadcasters” supported the 10/10 proposal, they also argued that the Commission should adopt a higher 12% - 15% standard. Comments of Coalition Broadcasters (“Coalition Broadcasters Comments”) at 11.

*FCC*, 284 F.3d 148 (D.C. Cir. 2002), *rehearing denied*, 2002 U.S. App. LEXIS 16619 (D.C. Cir. Aug. 12, 2002).

### III. BELO'S MODIFIED DUOPOLY RULE

Belo Corp., like the NAB, presented extensive evidence supporting elimination of the Commission's current duopoly rule.<sup>7</sup> Belo's comments demonstrated that television duopolies do not pose any risk to viewpoint diversity; that broadcast television stations compete with a host of media outlets; that duopolies enhance local news operations; and that competition concerns are better left to the DOJ and FTC.<sup>8</sup> Yet, inexplicably, Belo proposes that the Commission "continue to regulate transactions among top four television stations" in a market, without providing justification for the retention of this aspect of the duopoly rule.<sup>9</sup> Although Sinclair concurs with the majority of the evidence and legal arguments presented in Belo's comments, Sinclair strongly disagrees with Belo's position regarding retention of the Top 4 rule, particularly as Belo offers no justification for retaining the Top 4 rule.

In stark contrast to Belo's bare statement of support for the Top 4 rule, the comments of Sinclair, Emmis Communications Corporation, and others more than justify elimination of the Top 4 rule by demonstrating in detail the legal and empirical shortcomings of the rule. For example, Emmis' comments demonstrate that the Top 4 rule does not promote or protect diversity or competition and that there is no legitimate reason for the Commission to retain an

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<sup>7</sup> Comments of Belo Corp.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 25.

audience share-based component to its local television ownership rule.<sup>10</sup> Sinclair and Emmis both pointed out that the Commission’s notion that top-four stations are the most likely sources of news is erroneous.<sup>11</sup> The record also shows that there is no plausible diversity rationale for the local television ownership rule and that it should be repealed in its entirety, including the Top 4 rule.

#### **IV. SINCLAIR’S NEWSCENTRAL INITIATIVE**

Several commenters, most notably the National Association of Black Owned Broadcasters and the Rainbow/Push Coalition (“NABOB/Rainbow”), argue that Sinclair’s recently announced initiative to centralize parts of its news operations will somehow adversely affect viewpoint diversity. While Sinclair does not believe its plans in this regard are particularly relevant to this rulemaking proceeding, Sinclair nonetheless feels compelled to provide a brief reply in order to clear up any mischaracterization of Sinclair's efforts.

Sinclair’s NewsCentral initiative is intended to allow Sinclair to produce and broadcast news in a more efficient manner than is currently the case. Such efficiencies will allow Sinclair to increase the number of markets in which Sinclair stations broadcast local news and to improve the quality of its newscasts.

Without going into extensive detail, the NewsCentral model rests on the establishment of a centralized location which will produce and simulcast national/international news, sports, etc. for local markets. Contrary to the inferences of NABOB/Rainbow, each of such local markets will continue to have a full complement of news personnel to report on local stories. Such a

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<sup>10</sup> Comments of Emmis Communications Corporation.

<sup>11</sup> *Id.* at 25-26.

structure will end the unnecessary duplication of efforts that currently exists when personnel in each news producing market pursue the same non-local stories for broadcast each day. Since the costs of the NewsCentral operation will eventually be spread across a number of markets, Sinclair will be able to afford to add personnel at its stations and to purchase additional equipment that will benefit many of its markets.

The objections to the NewsCentral project seem to rest on three faulty premises: (i) a concern that jobs will be eliminated; (ii) concerns over the elimination of a local perspective; and (iii) a belief that the project will place “control of the nation’s political discourse” within the ambit of “a handful of individuals.”<sup>12</sup> Each of these concerns is completely baseless.

With regard to concerns over the elimination of jobs, Sinclair respectfully suggests that such an issue is outside the FCC’s scope of responsibility and should be disregarded in this proceeding. But, in any event, the comments regarding job loss are simply incorrect. Although Sinclair agrees that certain positions will be eliminated in its existing news operations as a result of the implementation of the NewsCentral model, Sinclair expects that a greater number of positions than are lost will in fact be created as a result of staffing requirements for the centralized operations center and the local news teams in many markets where Sinclair expects to add a new local news product.

Concerns over a lack of localism are equally unfounded. As noted above, Sinclair plans to have a full local news staff at each of its broadcast locations. These staffs are intended to, and in fact will, cover the local news in each of their respective markets as well as (or perhaps,

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<sup>12</sup> Comments of National Association of Black Owned Broadcasters, Inc. and the Rainbow/Push Coalition, Inc. (“NABOB/Rainbow Comments”) at 5.

because of the freedom from not having to focus on non-local news, better than) news operations in such markets which are completely locally produced.

Finally, Sinclair also rejects the theory that the centralization of certain aspects of news programming is somehow part of some Machiavellian scheme to take over the universe (or at least the United States). Nothing could be further from the truth. In the first place, any suggestion that Sinclair can somehow unduly influence the nation's opinions, even if it wanted to, ignores the extensive evidence of the numerous viewpoints available to the population. Moreover, Sinclair news directors historically have been left alone to determine the direction of their newscasts. It is absurd to think that the construction of the NewsCentral model, which is designed to provide national and international news as well as sports news, will have any effect on the longstanding local news practices at Sinclair stations.

Remarkably NABOB/Rainbow allege that certain off-the-cuff comments by Sinclair's Chief Executive Officer, David Smith, as reported in the press, somehow represent the proverbial "smoking gun." Mr. Smith's complaint that a local audience in a community far from Los Angeles is not served by a story about a water-main break in Los Angeles (a city in which Sinclair does not own a television station) has nothing to do with keeping "the news under his control." Rather, Mr. Smith simply wants to make certain that television audiences receive the local news from their own communities and receive the very best in national and international news. Sinclair believes that the latter can be better achieved through a centralized news operation. In the same way that Sinclair takes advantage of economies of scale to employ senior sales, programming, finance, and human relations personnel at its corporate office to assist in and give direction to the operation of those functions at the station level, it believes its centralized news personnel will improve its news function at each of its stations.

**V. DUOPOLIES AND LMAS HAVE BENEFITED THE PUBLIC INTEREST AND HAVE NOT CAUSED ANY HARM**

As the Commission is aware, duopolies in certain markets have been permissible and have existed for many years. In addition, LMAs (which the Commission decided in August 1999 are so close to ownership as to make them attributable) have been in existence for more than a decade. Numerous commenters (including Sinclair) have provided abundant examples of benefits to the public as a result of LMAs/duopolies, ranging from cost savings efficiencies to increased news and public affairs programming to the acceleration of the digital buildout. In particular, Sinclair calls the Commission's attention to the combined comments of the Coalition Broadcasters who provide admirable detail to the numerous benefits each has realized.<sup>13</sup> Indeed, Sinclair presented the Commission with similar evidence of the benefits of LMAs/duopolies not only in its recent comments in this proceeding, but also in comments filed February 7, 1997 in MM Docket Nos. 91-221 and 94-150, almost six years ago.<sup>14</sup> Specifically, in these earlier comments, Sinclair detailed how it rescued one station from bankruptcy, turned a home shopping station into a profitable entertainment station, added a local newscast, and produced other significant benefits for its LMA stations and the public.<sup>15</sup>

In striking contrast to the comments demonstrating documented benefits from duopolies are the comments opposing the easing of duopoly restrictions. Such comments are filled with nothing more than strong opinion, conjecture, and predictions of harm. Significantly, however,

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<sup>13</sup> Coalition Broadcasters Comments at 6-9, 15-33.

<sup>14</sup> Comments of Sinclair Broadcast Group, Inc., MM Docket No. 91-221 and 94-150, filed Feb. 7, 1997.

<sup>15</sup> *Id.* at 7-8.

they do not contain any actual instances of harm which surely would have arisen over the past decade if the speculation of the commenters had any kernel of truth. As a former General Counsel of the FCC recently stated: “It speaks volumes that, despite the consolidation of media ownership over the past decade, no anticompetitive effects have been demonstrated.”<sup>16</sup> Similarly, the comments of Hearst-Argyle Television, Inc. persuasively argue that relaxation of the current duopoly rule is warranted “because the ‘evils’ of television duopoly have not been demonstrated.”<sup>17</sup>

Apparently the only comments which even attempted to present actual examples of such “evils” were those submitted jointly by the AFL-CIO, American Federation of Television and Radio Artists et al. (“AFTRA”).<sup>18</sup> These comments, however, cannot be credited because even a cursory review of the examples presented reveals that they are inaccurate. Sinclair will comment on these examples insofar as they refer directly to Sinclair.

AFTRA first takes Sinclair (and jointly programmed stations) to task because of the joint news operation on Sinclair-owned WKEF-TV (the NBC affiliate in Dayton, Ohio) and on the

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<sup>16</sup> Bruce Fein, *It's About Time To Kill the Caps*, Broadcasting & Cable, Jan. 27, 2003 at 28.

<sup>17</sup> Comments of Hearst-Argyle Television, Inc. (“Hearst-Argyle Television Comments”) at 9.

<sup>18</sup> Note that two sets of comments were actually submitted: (1) Comments of the American Federation of Labor and Congress of Industrial Organizations on behalf of its 65 member unions including the American Federation of Television and Radio Artists, Communications Workers of America, National Association of Broadcast Employees and Technicians of the CWA, The Newspaper Guild of the CWA, Writers Guild of America, East, Inc., and the Department for Professional Employees, AFL-CIO (“AFL-CIO/AFTRA”) and (2) Comments of the American Federation of Television and Radio Artists and Writers Guild of America, East (“AFTRA/Writers Guild”). Both comments, however, are substantially similar, and, for present purposes, in their discussion of Sinclair stations in Dayton and Flint, they are virtually verbatim. AFL-CIO/AFTRA at 48 *and* AFTRA/Writers Guild ¶ 36 (omitting the words “for example”).

Dayton Fox affiliate, WRGT-TV, which Sinclair programs pursuant to an LMA. According to AFTRA, this joint operation has resulted in the same news content appearing on both stations, which has caused diversity to suffer in the Dayton market.

While some of the same news content has appeared on both stations, no doubt the same content has also appeared on the news programming airing on WDTN-TV, the Dayton ABC affiliate owned by Sunrise Television Corporation, and on WHIO-TV, the Dayton CBS affiliate owned by Cox Broadcasting. It is a well known fact that news organizations typically report on many of the same news-making events.

The commenters have not undertaken a comprehensive review of the WRGT-TV and WKEF-TV newscasts. Had they done so, they would have realized that in many instances the news content is different. See the Declaration of Karrie Rossmiller (Exhibit 1) the executive producer of Sinclair's Dayton news operations which reflects the fact that programming decisions are made in direct response to the viewing demands of the different audiences to which these two stations appeal and different programs are presented.

AFTRA's comments also ignore the significant fact that the newscast on WRGT-TV began only after Sinclair had purchased WKEF-TV and commenced its LMA of WRGT-TV. It was this joint operation that created the efficiencies which allowed WRGT-TV to have a newscast in the first place. In other words, rather than having harmed diversity, as the commenters' unsupported statements would have the Commission believe, the combined operations of these two stations has actually increased the number of broadcast television news "voices" in the Dayton, Ohio market.

Even more ridiculous is AFTRA's claim that consolidation has eroded localism in Flint, Michigan because the weather on Sinclair-owned WSMH-TV (the Fox affiliate in that market) is

provided by Sinclair’s NewsCentral operations in Baltimore, Maryland.<sup>19</sup> In the first place, the weather reports on WSMH-TV have absolutely nothing to do with duopoly—WSMH-TV is the only station in Flint in which Sinclair has any interest. Second, *the newscast on WSMH-TV is the first newscast created as part of the NewsCentral model*. In the absence of the efficiencies provided by this model, WSMH-TV would have continued to have been unable to afford a newscast, something which it has never had in the past. Thus the efforts of Sinclair and its NewsCentral model have served to increase the number of news voices in the Flint market, not decrease them.

Another commenter, the Office of Communication, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Civil Rights Forum, Philadelphia Lesbian and Gay Task Force, and Women’s Institute for Freedom of the Press (“UCC”), also failed to demonstrate any harm resulting from television duopolies.<sup>20</sup> UCC argues that viewpoint diversity suffers when duopolies are formed based on the facts that some duopoly stations in Los Angeles and New York share newsgathering resources and that two Viacom stations in Detroit have stopped

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<sup>19</sup> Sinclair notes that this same complaint was leveled regarding the Dayton newscasts, where Sinclair intends in the near future to use its NewsCentral operations to provide weekend weather reports. Contrary to the unsupported and amusing suggestion in the comments that where a weather report originates is “plainly of interest to the local community,” Sinclair suspects that the local community is more interested in the accuracy of the report than its place of origin. In any event, where local weather is of such importance as to constitute a separate news story (*e.g.*, a blizzard), the NewsCentral model contemplates local in-market reporting covering that event as a news story.

<sup>20</sup> Comments of the Office of Communication, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Civil Rights Forum, Philadelphia Lesbian and Gay Task Force, and Women’s Institute for Freedom of the Press (“UCC Comments”).

producing news.<sup>21</sup> While the facts may be correct to some extent, there is no showing of harm from shared news operations or that the Detroit situation resulted from Viacom's duopoly. Nor is there a showing that duopolies will not cover local news or an acknowledgement of the fact that many stations are only able to provide a local newscast because of the efficiencies resulting from common ownership or operation.

UCC also argues that the Commission should continue to count only broadcast television stations as "voices" for purposes of the local television ownership rule. According to the comments, "radio, newspapers, and cable lack the requisite consumer reliance and availability" to be considered "voices."<sup>22</sup> Yet, the UCC also argues that "the public continues to primarily rely on broadcast stations and newspapers for news and public affairs" and cites various studies as showing that consumers use newspapers, radio, cable, and satellite as sources of local and national news.<sup>23</sup> Further undermining its argument about a lack of consumer availability, elsewhere in the comments UCC proclaims that cable "is now virtually ubiquitous" with sixty-nine million subscribers and that DBS has "experienced dramatic growth" with sixteen million

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<sup>21</sup> *Id.* at 40.

<sup>22</sup> *Id.* at 44.

<sup>23</sup> *Id.* at 23-24. UCC also states that "the Supreme Court has found that broadcast television is the primary source of election information for the majority of Americans," citing *Arkansas Educ. Television Corp. v. Forbes*, 523 U.S. 666 (1998). Apart from the fact that the Supreme Court did not make such a "finding," the *Forbes* Court held that a public broadcast station could exclude candidates from televised debates. *Id.*

subscribers.<sup>24</sup> Finally, UCC's contention that the Internet is not widely used and provides little viewpoint diversity is refuted by the public's participation in this very rule making.<sup>25</sup>

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<sup>24</sup> UCC Comments at 57.

<sup>25</sup> *Id.* at 33-34. According to the Commission's Electronic Comment Filing System, over 2700 comments had been filed in MB Docket No. 02-277 as of January 31, 2003. The vast majority of these comments were "form comments" generated by two Internet sites—[www.chicagomediawatch.org](http://www.chicagomediawatch.org) and [www.democraticmedia.org](http://www.democraticmedia.org). (Exhibits 2 and 3). Although the submission of form comments does little to bolster the record and should be ignored as to the substance of the comments, the very fact of their submission conclusively demonstrates the ability of the Internet to inform and influence the public and wholly supports the contentions of Sinclair and other commenters that the Internet is an important source of diversity however that term is defined.

